

# Lobbying and Optional Program Deductions for 2007 Membership Fees

## The State Bar of California’s Statement of Chargeable and Nonchargeable Expenses for 2005 and Independent Auditors’ Report; Procedures Under *Keller v. State Bar of California*

Under *Keller v. State Bar of California*, 496 U.S. 1 (1990), the State Bar may constitutionally use mandatory membership dues to fund activities germane to the State’s interest in regulating the legal profession and improving the quality of legal services; it may not, however, under the First Amendment, use mandatory dues to fund activities of an ideological or political nature which fall outside of those areas of activity. Each year the State Bar must provide to its membership an audited statement listing the categories of expenditures of mandatory dues during the preceding year. See *Keller*, 496 U.S. 17, citing *Teachers v. Hudson*, 475 U.S. 292 (1986). The purpose of the audited statement is to permit members to gauge the propriety under *Keller* of the annual membership fee that they are charged and must pay.

Members of the State Bar are not required to pay and may deduct \$5 from their annual dues if they do not wish to support legislative activities of the State Bar. Cal. Bus. & Prof. Code §6140.05. The California Legislature and the Board of Governors of the State Bar have limited the amount that may be spent on State Bar legislative activities to the revenue paid voluntarily by members who do not take the \$5 deduction. Members may also deduct \$5 from the annual dues if they do not wish to support the State Bar’s Bar Relations and Elimination of Bias programs; expenses of these programs are similarly restricted by the Board of Governors to voluntary payments by those members not taking the deduction or other voluntary sources. (Instructions for taking the deductions may be found in the 2007 Membership Fee statement, which has been mailed to members.) In addition, the State Bar is prohibited from funding any activities of State Bar Sections with mandatory dues. Cal. Bus. & Prof. Code §6031.5(a). The annual audit of the State Bar includes an examination of the receipts and expenditures of the State Bar and its Sections to assure compliance with this restriction. Cal. Bus. & Prof. Code §6145(a). These expenses have been excluded from the mandatory dues charged to members.

After reviewing the Statement of Chargeable and Nonchargeable Expenses for 2005 and Independent Auditors’ Report, a member may object and challenge the mandatory membership fees for 2007 on the ground that one or more of the chargeable expense categories include political or ideological activities that are not germane under *Keller* to regulating the legal profession or improving the quality of legal services. A member’s challenge must be submitted individually and in writing. The written challenge must include the challenger’s name, address, telephone number, bar membership number and category of chargeable expense that is being challenged. A challenger must sign and submit the challenge by the due date for payment of the annual membership fee; *the challenge must be accompanied with timely and full payment of the 2007 membership fee less only the deductions for the State Bar’s Legislative Activities and the Bar Relations & Elimination of Bias programs. Any challenge and payment must be postmarked or delivered before the end of business on February 1, 2007, to:*

SECRETARY  
THE STATE BAR OF CALIFORNIA  
180 HOWARD STREET  
SAN FRANCISCO, CALIFORNIA 94105-1639

Upon receipt of a timely and proper challenge, the State Bar will place the disputed amount of the challenger’s mandatory dues in an interest-bearing escrow account. At its next regularly scheduled meeting following the deadline or as soon thereafter as the matter may be considered, the Board of Governors will decide whether to give a pro rata refund to the challenger or to submit the dispute for expeditious arbitration before an impartial arbitrator. If the dispute is submitted for arbitration, the Board may consolidate all challenges. The challenger(s) and the State Bar by agreement may select an impartial arbitrator. In consolidated challenges, the arbitrator may be selected by an agreement between the State Bar and 75 percent of the challengers. If there is no agreement on an impartial arbitrator within 30 days following the decision to arbitrate, an impartial arbitrator will be appointed by the American Arbitration Association. The State Bar may extend the time to select the arbitrator, up to 30 additional days. The arbitration will be heard at the San Francisco or Los Angeles office of the State Bar, as determined by the State Bar. The proceedings are informal, and the State Bar will have the burden to show that the disputed activities are germane to the State Bar’s purposes of regulating the legal profession or improving the quality of legal services. The challenger(s) will be given an opportunity to present their own evidence and to present written arguments in support of their challenge(s). The arbitrator will issue a written decision and any award.

## THE STATE BAR OF CALIFORNIA

### Statement of Chargeable and Nonchargeable Expenses for the Year Ended December 31, 2005, and Independent Auditors’ Report

#### INDEPENDENT AUDITORS’ REPORT

Board of Governors  
The State Bar of California  
San Francisco, California

We have audited the accompanying Statement of Chargeable and Nonchargeable Expenses (the “Statement”) of The State Bar of California (the “State Bar”) for the year ended December 31, 2005. This Statement is the responsibility of the management of the State Bar. Our responsibility is to express an opinion on the Statement based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Statement is free of material misstatement. An audit includes consideration of

internal control over financial reporting as a basis for designing procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the State Bar’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the Statement, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Statement. We believe that our audit provides a reasonable basis for our opinion. The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories as described in Note 2 to the Statement and is not intended to be a complete presentation of the State Bar’s revenues and expenses in conformity with accounting principles generally accepted in the United States of America. In our opinion, such Statement presents fairly, in all material respects, the chargeable and nonchargeable expenses of the State Bar for the year ended December 31, 2005, on the basis of presentation described in Note 2. This report is intended solely for the information and use of the Board of Governors, management of the State Bar, and members of the State Bar as defined in Note 1 to the Statement, and is not intended to be and should not be used by anyone other than these specified parties.

Deloitte & Touche LLP

May 22, 2006

## THE STATE BAR OF CALIFORNIA

### NOTES TO STATEMENT OF CHARGEABLE AND NONCHARGEABLE EXPENSES YEAR ENDED DECEMBER 31, 2005

#### 1. SIGNIFICANT ACCOUNTING POLICIES

**Description of Entity** — The State Bar of California (the “State Bar”) was first formed as a public corporation by the California State Legislature’s passage of the State Bar Act on July 29, 1927. On November 8, 1960, voters amended the California Constitution to add the State Bar as a constitutional agency in the judicial branch of government. Membership in the State Bar and payment of an annual membership fee are required as a condition of the practice of law in the State of California.

**Basis of Accounting** — To ensure observance of limitations and restrictions placed on the use of resources available to the State Bar, the accounts of the State Bar are maintained in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and reporting purposes into funds established according to their nature and purpose.

Accounting principles generally accepted in the United States of America are applied by the State Bar in conformance with pronouncements of the Governmental Accounting Standards Board (“GASB”). Amounts in the Statement of Chargeable and Nonchargeable Expenses (the “Statement”) were derived from the State Bar’s audited 2005 financial statements.

**Use of Estimates** — The preparation of the Statement requires management to make estimates and assumptions. Actual results could differ from those estimates. These estimates and assumptions affect the reported amounts of chargeable and nonchargeable expenses during the reporting period.

#### 2. BASIS OF PRESENTATION

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories. Although derived from the State Bar’s audited 2005 financial statements, the Statement is not a substitute for the financial statements, nor is it intended to be a complete presentation of the State Bar’s revenues and expenses in conformity with accounting principles generally accepted in the United States of America.

The State Bar Act sets the annual membership fee for members of the State Bar. The amount of the annual membership fee, however, is subject to certain adjustments. The United States Supreme Court in *Keller v. State Bar of California*, 496 U.S. 1 (1990) (“*Keller*”) held that the State Bar could not use mandatory membership fees paid by an objecting member to fund political or ideological activity that was not necessarily or reasonably related to the State Bar’s purpose of regulating the legal profession or improving the quality of legal services. The Statement provides the basis for the membership fee. It describes and separates the “chargeable” expenses, which a member must pay as part of the annual membership fees, and the “nonchargeable” expenses, if any, which a member is not required to pay. In calculating the chargeable and nonchargeable expenses, absolute precision is not expected nor required pursuant to *Chicago Teachers v. Hudson*, 475 U.S. 292, 308 (1986). Expenses included in the Statement are derived from expenses included in the general fund (except program costs funded by filing or other fees), the building fund, client security fund, the lawyers assistance fund, and the support and administration fund of the State Bar. Program revenue included in the Statement represents seminar/workshop revenue, continuing legal education fees, *California Bar Journal* revenues, rental income, insurance program revenue and other miscellaneous revenue from a dozen various programs that are used to fund the related programs.

Since January 1, 2000, amendments to the State Bar Act have provided each member with the option of deducting \$5 from the annual membership fee for lobbying and related activities outside of the parameters established in *Keller*. (Cal. Bus. & Prof. Code §6140.05.) The amendments also have prohibited the State Bar from funding the activities of its Conference of Delegates and Bar sections with mandatory membership fees. (Cal. Bus. & Prof. Code §6031.5.) In October 2002, the activities of the Conference of Delegates were assumed by an independently incorporated successor entity, the Conference of Delegates of California Bar Associations (“CDCBA”). An amendment to Cal. Bus & Prof. Code §6031.5 allowed the collection of voluntary fees or donations to the CDCBA. In addition to these changes, in 2001, the Board of Governors provided members the option of an additional \$5 deduction from membership fees for certain other programs. Although reasonable persons may disagree whether some of these programs and activities may be chargeable under the criteria in *Keller*, the Board of Governors has elected to make them optional in their entirety.

Commencing January 1, 2000, the amount of expenses that the State Bar could incur for legislative activity outside of the parameters of *Keller* was restricted by statute to the total revenue collected from those members electing to pay the \$5 deduction under Cal. Bus. & Prof. Code §6140.05. Instead of categorizing its programs as within or outside of *Keller*, the State Bar has elected to restrict the expenses of all of its legislative activity to voluntary funds and continues to do so today. Similarly, the funding of certain other programs is now limited to voluntary fees. Accordingly, all such expenses have been funded by restricted funds composed of voluntary fees, paid at the option of members. Members who do not wish to support these activities may deduct the amounts from their annual membership fees. As a result, no mandatory fees are used to fund nonchargeable expenses. Therefore, for purposes of the Statement, there are no nonchargeable expenses for mandatory membership fees for the year ended December 31, 2005.

The following is a listing of the major expenses that the State Bar has categorized as chargeable, including a description of the programs or activities per-



formed by category. The classification of a program or expense as chargeable was based on the standards in *Keller* that have been applied to determine whether an expense was necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the State of California. Nonchargeable expenses, as stated above, were funded by voluntary fees paid at the option of members. Determining which State Bar programs and activities are chargeable and non-chargeable requires that judgments be made by the State Bar.

The State Bar of California

STATEMENT OF CHARGEABLE AND NONCHARGEABLE EXPENSES YEAR ENDED DECEMBER 31, 2005		
	Amount	Percentage of Total Program Expenses
CHARGEABLE EXPENSES AND RELATED		
PROGRAM REVENUE (Note 2):		
Discipline	\$46,245,591	87.1%
Administration of Justice	750,247	1.4
Administration of the Profession	1,025,178	1.9
Lawyer Assistance Program	1,726,784	3.3
Competence	2,120,976	4.0
Program Development	1,242,738	2.3
Total chargeable program expenses	53,111,514	100.0%
Allocated administrative overhead	8,360,871	
Program revenue	(4,332,254)	
Net chargeable expenses	57,140,131	
NONCHARGEABLE EXPENSES AND RELATED		
PROGRAM REVENUE (Note 2)	—	
TOTAL NET CHARGEABLE AND NONCHARGEABLE EXPENSES	\$57,140,131	

Description of Categories — Chargeable Expenses and Related Program Revenue	
<div>Discipline — The purpose of the Discipline program is to protect the public by regulating the conduct of California lawyers.</div> <div>a. <i>Enforcement</i> Receive, review and analyze incoming communications which relate to disciplinary inquiries and complaints against attorneys. Investigate allegations of unethical and unprofessional conduct against attorneys who may have violated provisions of the State Bar Act, Rules of Professional Conduct or other standards of professional conduct. Prosecute attorneys in formal disciplinary hearings in the State Bar Court for violations of the State Bar Act or Rules of Professional Conduct. Activities include, as appropriate, the preparation of formal disciplinary pleadings, conduct of formal and informal discovery, and representation of the State Bar as Trial Examiners in the actual hearings and subsequent review proceedings. (Bus. &amp; Prof. Code §§6043, 6044, 6049, 6077, 6078, 6092.5 et seq.)</div> <div>b. <i>State Bar Court</i> Adjudicate formal disciplinary matters resulting in the final imposition of discipline or, in certain instances involving suspension or disbarment, the recommendation of discipline to the California Supreme Court. (Bus. &amp; Prof. Code §§6086.5, 6086.6; Cal. Rules of Court, rules 952, 953, 954.)</div> <div>c. <i>Client Security Fund</i> Receive, evaluate and process applications made to the Fund by persons who have suffered monetary losses due to dishonest conduct of lawyers and authorize recovery to eligible clients out of funds collected for this purpose. (Bus. &amp; Prof. Code §6140.5.)</div> <div>d. <i>Fee Arbitration</i> Administer a statewide program for arbitrating fee and cost disputes, and arbitrate those disputes that are not within the jurisdiction of an approved local bar association program. (Bus. &amp; Prof. Code §6200.)</div>	\$ 31,964,324
	\$ 7,713,263
	\$ 5,886,630
	\$ 681,374
	\$ 46,245,591
Administration of Justice — The purposes of the Administration of Justice program are: (1) to administer the work of the Commission on Judicial Nominees Evaluation (“JNE”) as mandated by Government Code §12011.5; (2) to improve the quality and delivery of legal services available to the people of the State; and (3) to aid in the advancement of the science of jurisprudence and improvement of the administration of justice. This program provides specialized professional advice, analysis, studies and information to the judicial, legislative and executive branches of government. Except JNE, the State Bar has elected to fund its other administration of justice activities with the voluntary legislative activities fund or other voluntary fees.	
a. <i>Commission on Judicial Nominees Evaluation</i> Evaluate and report to the Governor's Office on the qualifications of judicial candidates whose names have been submitted by the Governor. (Gov. Code §12011.5.)	\$ 750,247
Administration of the Profession — The purposes of the Administration of the Profession are: (1) Maintaining the official membership records and the roll of California attorneys required under Business & Professions Code §6002.1 and California Rules of Court rule 950.5; (2) administering the family and child support requirements as applied to licensed California lawyers under Welfare & Institutions Code §11350.6 and California Rules of Court rule 962; (3) administering the “one-stop” member call center to respond to member questions; and (4) administering the requirements of the multi-jurisdiction practice program for the limited practice of law in California by out-of-state attorneys under California Rules of Court 964-967.	
a. <i>Administration of the Profession</i> Maintain and administer the official membership records and the roll of California attorneys as may be necessary or advisable for the purpose of implementing and operating the program. (Bus. & Prof. Code §6002.1; Cal. Rules of Court, rules 950.2, 962, 964-967; Welfare & Inst. Code §11350.6.)	\$ 1,025,178
Lawyer Assistance Program — The purpose of the Lawyer Assistance Program is to provide an alternative to the traditional State Bar disciplinary mechanism, with the goal of the program being the identification and rehabilitation of attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness.	
a. <i>Lawyer Assistance</i> Oversee the operation of the Lawyer Assistance Program and adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the program. (Bus. & Prof. Code §6231.)	\$ 1,726,784
Competence — The purposes of the Competence program are (1) to provide and promote statewide competence education and (2) to assist others in providing and promoting statewide competence education programs.	
a. <i>Professional Competence, Planning and Development</i> Maintain and improve the standards of the legal profession to enhance attorney competence through: (1) promulgating and strengthening professional standards to protect the public; (2) assisting members to comply voluntarily with such standards (e.g., Ethics Hotline, California Compendium on Professional Responsibility, Lawyer Assistance Program); and (3) planning and development of programs to enhance attorney competence. (Bus. & Prof. Code §§6076, 6077.)	\$ 2,120,976
Program Development — The purpose of the Program Development program is to provide assistance in the delivery of civil legal services to the public, by working with legal services providers and bar associations to provide a variety	

of public service programs, including: pro bono legal services programs, lawyer referral services, pro per clinics, community-based resolution centers and programs to improve access to the courts. The program also provides limited staff support to the California Young Lawyers Association and to the Standing Committee on Delivery of Legal Services.	
a. <i>Legal Services Access</i> Provide technical assistance and support to bar associations and legal services programs to develop or expand the availability of legal services to low- and middle-income people in the State. Program development activity focuses on promoting pro bono publico efforts, lawyer referral services (“LRS”) and dispute resolution programs.	\$ 1,175,396
b. <i>California Young Lawyers Association</i> Foster a greater understanding of, and encourage interest among, recently admitted and young lawyers in the programs and activities of the State Bar. Provide a forum for the exchange of ideas in order to assist the State Bar in its programs. (Bus. & Prof. Code §§6013, 6013.4.)	\$ 67,342
	\$ 1,242,738

Allocated Administrative Overhead — General and administrative expenses are incurred to provide staff and operational support to all programs and activities of the State Bar in the following areas: human resources; finance; financial planning and analysis; data processing operations and development; printing; word processing; purchasing; membership records and certification; member billing and elections; building management; law library and archives; mail; legal counsel and advice; and the formulation, implementation and administration of policies through the Board of Governors and Executive Offices. The “overhead/interfund allocation/intrafund allocation” is the share of the administrative costs that are charged to the restricted fund programs for the support provided, using the methodology of the State of California for apportioning and recouping administrative support cost provided by the State’s general fund to its special fund programs.

General and administrative expenses are allocated based upon the ratio of the program’s expenditures to total program expenditures paid by mandatory dues.	
Communications	\$ 2,523,661
Executive Offices	3,571,544
General Counsel	3,294,863
Office of Finance	3,226,199
Office of Human Resources	1,328,462
Office of Administrative Support — Los Angeles	1,331,156
Office of Support Services — San Francisco	1,102,213
Information Technology	4,610,955
Office of Real Property (includes lease space cost)	1,478,562
Overhead/interfund allocation/intrafund allocation	(15,939,524)
Building Fund	1,832,780
Total	\$ 8,360,871

Program Revenue — Program revenue related to the general fund, building fund, Client Security Fund, lawyers assistance fund or the support and administration fund of the State Bar and that was used to fund related programs deemed to be chargeable expenses including the following.	
Seminar/workshop revenue	\$ 50,833
Continuing legal education fees	362,478
California Bar Journal revenue	1,265,780
Rental income — building	799,665
Insurance program revenue	1,128,182
Other miscellaneous revenue	725,316
Total	\$ 4,332,254

3. OPTIONAL DEDUCTIONS

The State Bar has determined that an amount up to \$10 may be deducted from the membership fees. This amount includes the \$5 set by the California Legislature for legislative and related activities and \$5 fixed by the Board of Governors of the State Bar for the optional programs.

The deduction is allocated to the following activities:

- a. Lobbying

Members may deduct the \$5 from the annual membership fee which would otherwise fund legislative proposals that improve the administration of justice but are outside the parameters of *Keller*. Legislative activity by the State Bar is limited by statute to the amount paid by members who elect not to take the deduction. (Bus. & Prof. Code §6140.05.)

- b. Other Optional Programs

Members may deduct the remaining \$5 from the annual membership fee which would otherwise fund the elimination of bias and bar relations programs to eliminate bias in the judicial system and legal profession and to increase participation of attorneys who have been underrepresented in the administration and government of the State Bar’s programs and activities, such as women, ethnic minority, gay, lesbian and disabled attorneys, and will not fund the cost of communicating and maintaining relations with local bars and other voluntary associations.